CHAPTER-IV

RIGHT TO INFORMATION AND ROLE OF JUDICIARY

1. Introduction:

A system where the poor remain poor is not inevitable but man-made, particularly where the government and its instrumentalities remain essentially rooted in the secretive colonial model of governance that treats citizens as subjects. In such a style of governance, citizens are largely excluded from governance in absence of informed and meaningful participation in the decision making process. They are unaware of their rights, and are therefore oblivious of what is happening in governance, they do not know how to speak out to ask; and they will conveniently not be told. These two factors secrecy by the bureaucracy and silence by the public "reinforce each other with the result that there is little accountability of bureaucrats. It is in this environment of a lack of transparency, accountability, responsibility and responsiveness in the governance that unrelenting problems of poverty, mass corruption and embezzlement of public funds flourish. Rarely does the behaviour of bureaucrats come under scrutiny unless there is a huge siphoning of money or a major scandal, but once the clamour dies down no one knows how the matter ended.

They are geared to defeat the purpose of the RTI Act, which is essentially to introduce transparency in governance and to check corruption. These actions can be
attributed to one of two reasons. The first, a deliberate attempt to intimidate those seeking information so that misdeeds and corruptions are not exposed. The second, which is far more likely: that there is lack of familiarity with the law and no application of mind to the provisions of law in order to enable people to access information.

2. Instances of cases dismissed without hearing people

Dr. Roop vs Office of the Director General of Income Tax

"I have filed a complaint on 29.03.06 with CIC. I got a decision regarding the complaint by post on 9.09.06. But I did not get any copy of response from respondent to the honorable commission nor I got any intimation from the commission about the date of hearing of the matter. Thus I did not get any opportunity to put my comments on the stand taken by the respondent."

Pankaj Khanna v. HPCL

"The petitioner has sent ten appeals. Out of which an Information Commissioner has disposed off three without considering Petitioner's reply and without giving him any opportunity of personal hearing. No opportunity has been given on any one often appeals even on the matter of Life and Liberty."

Kelan Modi

Ketan Modi filed Second Appeal with CIC. He did not enclose the correspondence with the CPIO/AA. So, it was assumed that he had not filed first appeal and his case

2. Ibid.
3. Ibid.
was dismissed, though he had filed first appeal. If the Information Commissioner had called him, he could have explained this fact. Ketan filed a review petition. The Review Application was also dismissed without going into the merits and without hearing him.

*Sh. N. K. Sethi v. Indian Trade Promotion Organisation*4

"I filed appeal with CIC dated 9.02.06. I followed in CIC telephonically (talked to Mr. Ajay on 9.05.06 at 11.35AM). I made a personal visit to CIC on 18.05.06 to check from Dr. Munish Kumar regarding the status of my appeal. I was told the matter is under submission with Mrs. Balasubramaniam. On 12.06.06, I sent an Email to Mrs. Padma Balasubramaniam. Then suddenly on 13th June 06, I saw on the website of CIC that decision on my appeal had been given on 12.06.06 without giving me a chance of personal hearing. I was shocked to see my appeal having been rejected and I had not been called even. My faith in justice under RTI Act from the Commission was totally shattered. I again wrote to the CIC on 2.06.06 mentioning that justice had been denied to me as I had not been called for personal hearing but till date nothing has been done."

*Vishwanath Poddar vs The Institute of Chartered Accountants of India*5

The CIC ruled:

"The appellant had filed certain complaints against M/s Bathiya & Associates, Mumbai. In this regard, he

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4. *Supra note 1, p. 8.*
sought information relating to the status the action taken by the competent authority.

The CPIO and the appellate authority have given para-wise response to his request for information, yet the appellant is not satisfied with their responses.

Since there is no denial of information as per the provision of the Act, the appellant may take up the matter relating to his grievances to the appropriate authority."

[This order has been passed without calling any of the parties. The Information Commissioner believes that because a parawise reply has been provided, hence there is no denial of information. But who would decide whether information has been provided. If the Commissioner had called the appellant for a hearing, he would have told why he was dissatisfied. ]

_Treesa Irish vs CPIO, Kerela Postal Circle, Trivndrum⁶_

"The CPIO, Kerala Postal Circle, has declined to furnish a photocopy of an evaluated answer sheet of the appellant, as sought for by her on the ground that no public interest was involved in her request. The appellate authority, while concurring with the decision of the CPIO, has also added another reason for rejection that the disclosure would compromise the fairness and impartiality of the selection process... Therefore, we find that in case of evaluated answer papers the information available with the public authority is, in his fiduciary relationship, the disclosure of which is exempt u/s 8(l)(e). In addition, when a candidate seeks for a copy of the evaluated answer paper,
either of his/her own or others, it is purely a personal information, the disclosure of which has no relation to any public interest or activity and this has been covered u/s 8(1)(j) of the Act..."

[The Information Commissioner not only defended the CPIO/AA's opinion which failed to provide any reasonable cause for rejection, but took the liberty to add another cause [denial u/s 8 (l)(e)] for rejection without giving an opportunity to the applicant to respond.]

3. **Instances of arbitrary rejection of cases**

   **Manish Dnyaneshwar Thool v. HPCL Mumbai**

   Munesh applied for a petrol pump. He did not get it. He asked for copies of application forms of other candidates and other information related to selection. CIC decision: "The Documents submitted by individual applicants contain a lot of information of confidential nature. The marks awarded by the panel experts to each candidate under different parameters are of confidential nature and this act has been carried out by them in fiduciary capacity which is exempt u/s 8 (1)(e)."

   **Sunita vs Reserve Bank of India**

   Some employees of Gurgaon Gramin Bank fraudulently withdrew money from the account of a housewife, Mrs Sunita. She complained to RBI and also filed a criminal complaint. Later, she filed an RTI application in RBI asking for action taken on her complaint. RBI rejected her request. When she appealed to

CIC, CIC rejected her request saying that relationship between RBI and Gramin Bank was fiduciary:

".. .the matter relates to the complaint of the appellant about the alleged unauthorized withdrawal of Rs. 10,000/- from the saving account of the appellant in Gurgaon Gramin bank. The appellant has stated that she has filed a case in the court and she wanted to file the reply of the Reserve Bank in the court..." CIC ruled "...In the instant case, file notings in possession of RBI is furnished by the Gramin Bank (third party) in fiduciary capacity. Therefore, the exemption u/s 8(1 )(e) has been correctly applied by the public authority."

_Dr. KHJambhulkar v. HPCL Phát

In response to an advertisement by the HPCL for retail outlet (Petrol Pump) dealership at Nandanvan, Nagpur, under 'freedom fighters' category, the appellant had applied and was finally unsuccessful. Aggrieved by the decision of the HPCL, he sought a copy of the application and other related documents submitted by the first empanelled candidate. While part of the information was furnished the other part was denied on the ground that the information sought pertain to third party, the disclosure of which does not fall under the public domain u/s 8(1 )(d) & (j) of the Act. The Commission ruled that "the marks awarded by the panel experts to each candidate under different parameters are of confidential nature and this act has been carried out by them in fiduciary capacity, which is exempt u/s 8(1 )(e). The appeal is accordingly disposed off."

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8. Supra note 7, p. 13.
Bhagwan Chand Saxena v. Safdarjung Hospital

The appellant sought for a certified copy of medical certificate issued in respect of one Sh. Jaipalan who had been allegedly appointed as Assistant Director in Ministry of commerce even though he was declared as medically unfit. CIC ruled, "Disclosure of medical reports of any citizen would amount to invasion of his privacy. Appeal is dismissed."

In several cases, people have asked for annual property returns of officers. These have been denied saying that this is personal information.

Mahender Kumar v. NABARD

The appellant asked for information on the number of vigilance cases pending enquiry and other related information.

It was held that "the Appellant who is an Officer in NABARD, has sought information related to administrative issues within the bank, through various correspondence."

CPIO denied information saying that there was no public interest CIC held "There is no denial of information."

A. X. S. Jiwan v. Commissioner Central Excise

In the present case information seeker has asked several questions expecting the CPIO to reply in "yes" or "no", which the CPIO ought not to do.

D. V. Rao v. Dept of Legal Affairs

10. Ibid.
12. Ibid.
"RTI Act does not cast any obligation on public authority to answer queries, as in the case, in which a petitioner attempts to elicit answers to his questions with prefixes such as "Why", What", "When" and "Whether".

4. A case of blatant favoritism

*Kusum Devi & Others vs. Delhi Development Authority*\(^\text{13}\)

Thirty-eight residents of East Delhi filed individual RTI applications seeking status of the daily progress made on their complaints to the DDA. On not receiving any response within the time limit specified, the applicants filed first appeals. Again, no response was received. The applicants then filed a second appeal in the CIC. CIC issued notice of hearing to the DDA. DDA did not show up for the first hearing on 29.05.06. Next date was fixed for 17.08.06. DDA again did not turn up. CIC's office contacted CPIO on telephone during the hearing but could not get any information about his whereabouts. The CIC issued show cause notice to the CPIO why a penalty should not be imposed on him in each of the 38 cases and another date of hearing was fixed. Finally, CPIO turned up on the next date. CIC was so happy to finally see him that he dropped the penalty stating that the CPIO "has taken action on the applications made in this case but has not informed appellants of the action taken...CPIO has pleaded that the applicants of this nature were more than 245, making it time consuming supplying information to all...."

The only action that CPIO had taken was to transfer all the

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cases to the Education Department, whereas the applications pertained to him and he was supposed to provide information. This order has not been placed on the CIC's website. The 38 applicants are yet to receive any piece of information so far. It was a question of the lives of slum children:

*Bobby Verma and others v. Directorate of Education, Delhi*\(^{14}\)

Forty residents from East Delhi made individual requests for information to the Deputy Director Education (East) on 1.12.05 on the issue of admission of students from Economically Weaker Section to Public Schools. Many of them did not receive any response in 30 days. First appeal was filed on 18.01.06. The applicants were invited to the first appeal hearing on 10.02.06. The Appellate Authority observed that information had been provided to the satisfaction of appellants, which was blatantly wrong. A second appeal was filed on 6.03.06 with the CIC. CIC scheduled a hearing on 23.03.06. The PIO was directed to provide information in 15 days and was issued a show cause notice as to why he should not be penalized for not providing information within 30 days. The CIC also ordered that the Government of NCT would examine if there were any suspicions of venality in admission warranting an enquiry by the CBI. To date no response has been received. In the meanwhile, Mr Habibullah dropped the penalty, when CPIO met him in his chamber and pleaded mercy. This order of dropping penalty is also not there on CIC's

\(^{14}\) Ibid.
website. When people came to know that Mr Habibullah has dropped penalties, they filed a review petition. That review petition has not come up for hearing in the last five months. PIO caught lying. CIC refuses to impose penalty

*Bina Popli v. Ministry of Statistics & Programme Implementation*¹⁵

Mrs. Bina Popli is a widow of a former Senior Inspector in CSO, Department of Statistics. She applied for information seeking copies of documents in the personal file of her late husband Shri Popli. On not receiving a response even after the lapse of 45 days, she applied for inspection of files. No response was received on this request as well and she filed an appeal. Her first appeal request was dismissed on the ground, "Personal file of late Joginder Singh Popli is not traceable in this office, as this is a 20 year old case... his name has been struck off from roll of this Department." The appeal was heard by CIC and it noted that several documents concerning Shri Popli are available within the public authority. The CPIO/AA had in fact lied to the applicant. However, the CIC refused to impose penalty on the ground "CPIO who bears the principal responsibility for ensuring that the appellant is kept informed is, therefore liable to penal action u/s 20(1). However, he has retired since. Also there were several officials who processed the papers who become liable for penal action u/s 5(5) for misinforming the CPIO and appellant regarding availability of the record". But despite making such strong observations, the CIC refused to

¹⁵ Supra, Note 13, p 10.
impose penalty. Even if a person has retired, a penalty could be imposed on him and the amount could be recovered from his pensionary benefits. CIC finds it a fit case for penalty but does not impose one.

5. **CIC finds it fit case for penalty but does not impose one**

*D. M. Solanki* vs. *DRM/SEC Railway, Nagpur*¹⁶

Mr. Solank is a senior citizen who attempted to file an RTI application with the PIO, DRM SEC Railway, Nagpur. The PIO and the chief cashier refused to accept his application and the application fee. The applicant therefore filed his application with Divisional Railway Manager. Mr. Solanki filed a complaint with the CIC. The CIC ordered saying that it is a "fit case for proceeding against PIO u/s 20 (1) for levy of penalty. Four months have passed since, the applicant is awaiting a response." However, no penalty was imposed.

6. **No response received still no penalty**

*D. P. Sangar* vs. *Ministry Environment & Forests*¹⁷

"The letter of response to the application till such time as notice was issued to the Public authority by the Commission leads to suspicion of malafide denial...CPIO will u/s 20 (1) within fifteen days show cause why a penalty should not be imposed..."

*Dr. Anand Akhila* vs. *Council of Scientific & Industrial Research (CSIR)*¹⁸

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"The PIO seems to have had no reasonable ground for delay in sending the brief and slipshod response to the application...the complaint of malafide intent has not been denied...he will show cause u/s 20 (1) within ten working days why he should not pay the penalty..." Piyush Mohapatra vs. Ministry of Environment & Forests [30.05.06] "Since PIO has been held in violation of prescribed limits u/s 7(1)... he may appear before the Commission on June 12, 2006 to show cause why penalty u/s 20 (1) should not be imposed on him..." Since I don't know names of CPIO, no penalty.

Ram Bhawan Singh v. Chief Post Master General, Bihar Cirle

Application for Information as well as first appeal received no response. The matter went into second appeal and the Information Commissioner stated," the admitted fact is that information sought for on 31.12.05 was provided in full only on 12.6.06, that is after a period of more than 150 days, not withstanding the fact that in terms of RTI Act... Neither CPIO or Appellate authority has cared to explain the delay... it would have been proper to issue show cause notice to them as to why penalty should not be imposed. However, in the absence of the names of the CPIO and designated appellate authority...."

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